

JAMES D. BRADBURY, PLLC

9442 CAPITAL OF TEXAS HIGHWAY NORTH  
ARBORETUM PLAZA 1, SUITE 500  
AUSTIN, TEXAS 78759

ALSO ADMITTED IN ARKANSAS

OFFICE: 512-343-3626  
FAX: 512-345-2924  
JIM@BRADBURYCOUNSEL.COM

January 11, 2016

**VIA Electronic Filing**

Ms. Bridget C. Bohac  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
MC 105  
Post Office Box 13087  
Austin, Texas 78711-3087

RE: TCEQ Docket No. 2015-1763-MWD, Application by MSEC Enterprises,  
Inc. for TPDES Permit No. WQ0015341001

Dear Ms. Bohac:

Attached please find Applicant MSEC Enterprises, Inc.'s Response to Hearing Requests for e-filing in the referenced permit matter for consideration by the Commissioners at the Feb. 3, 2016 Agenda meeting. A copy of this Response will be served on the Mailing List in accordance with TCEQ Rules.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

*/s/ James D. Bradbury*

James D. Bradbury

Enclosure  
JDB:ccs

cc: Mailing List

**TCEQ DOCKET NO. 2015-1763-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>MSEC ENTERPRISES, INC.</b>	<b>§</b>	<b>TEXAS COMMISSION</b>
<b>FOR TPDES PERMIT NO.</b>	<b>§</b>	<b>ON</b>
<b>WQ0015341001</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**APPLICANT MSEC ENTERPRISES, INC. RESPONSE TO HEARING REQUESTS**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

Applicant MSEC Enterprises, Inc. files this Response to Hearing Requests and in support of the Draft Permit states as follows:

**I. INTRODUCTION**

On February 3, 2015, MSEC Enterprises, Inc. (“MSEC”) applied to the Texas Commission on Environmental Quality (“TCEQ”) for a new Texas Pollutant Discharge Elimination System Permit No. WQ0015341001 (“TPDES Permit”) to authorize the discharge of treated domestic wastewater from a new plant (“WWTP”) to be built in Montgomery County, Texas. The primary purpose of the new WWTP is to support new campus construction for the Montgomery Independent School District (the “District”), including construction of new elementary, middle, and high schools for this rapidly growing area.

The Application spells out the treatment process to be compliant with TCEQ requirements. Wastewater that enters the WWTP will be treated to a level that is compliant with Type I reclaimed water use. The reclaimed water will be pumped to a Reclaimed Water Pump Station where it will be used by the District to irrigate landscape around the high school campus in an effort to conserve fresh water. Any excess will be discharged to Mound Creek. The daily average flow at the final phase of construction would not exceed 105,000 gallons per day (“GPD”).

Construction of the WWTP and the proposed discharge are critically important to enable the District to continue its expansion project, which was approved by the voters of Montgomery County in a May 2015 Bond Election. The first school is planned to open by August 2017. In order for the District to comply with the deadlines under the expansion project, it is imperative that construction begin on the WWTP in the Spring of 2016.

Three requests for a public meeting or contested case hearing were filed by landowners: 1) Paul Coombs; 2) Martha Mayer; and 3) Jasper Duncan Cartwright and Joe Cartwright. All four landowners live or own property downstream from the proposed facility, although for the reasons outlined herein, none of the requests are sufficient to support a contested case hearing on the TPDES Permit.

The Executive Director (“ED”) recommends issuance of the TPDES Permit based on his conclusion, after a full technical review, that the effluent limitations and conditions in the draft permit comply with the Texas Water Quality Standards. MSEC respectfully requests that the Commissioners deny all hearing requests and approve the TPDES Permit.

## **II. RESPONSE TO HEARING REQUESTS**

According to TCEQ regulations, to be granted a contested case hearing, an “affected person” must timely request a contested case hearing in writing and specify the disputed issues of fact or law that should be referred for hearing. 30 Tex. Admin. Code § 55.201. An “affected person” is one who has “a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.” *Id.* § 55.203. An interest common to the general public is not a personal justiciable interest. *Id.* A hearing request also must include a list of all relevant and material disputed issues of fact that were raised during the comment period and

that form the basis of the hearing request. *Id.* § 55.201. The burden is on the requestor to satisfy this requirement, and if the submission is deficient in any manner, it should be denied.

Three requests for public meeting or contested case hearing were submitted on the TPDES Permit. Each of these landowners own land along the proposed discharge route. *See* Landowner Map, a true and correct copy of which is attached hereto as Exhibit “A” and incorporated by reference for all purposes. The public comment period on the TPDES permit ended on August 24, 2015, and the time to Request a Hearing ended on November 30, 2015. None of the requests are sufficient to merit a contested case hearing on the TPDES Permit.

#### **A. Request of Paul Coombs**

On or around April 10, 2015, Paul Coombs (“Coombs”) submitted his public comment and request for a “public meeting/hearing” to gather additional information and gain an understanding of the proposed discharge.<sup>1</sup> Coombs is a landowner who owns property approximately one mile downstream from the proposed discharge point. *See* Exhibit “A.” Coombs’ request is not sufficient to merit a contested case hearing and should be denied. Coombs’ comments suggest that he was only seeking additional information regarding the discharge. He does not allege any facts to dispute the TPDES Permit or to suggest that he has a personal justiciable interest that will be affected by the Application that is not common to the general public. *See* 30 Tex. Admin. Code § 55.203. Further, Coombs does not request a “contested case hearing” but instead makes clear that he is merely seeking information. Coombs is not an “affected person,” does not raise any disputed issues of fact or law that are relevant and material to the decision on the Application. *See* 30 Tex. Admin. Code § 55.209(e). Accordingly, Coomb’s submittal fails to meet the required threshold and his hearing request should be denied.

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<sup>1</sup> Coombs comments and request were raised during the public comment period. 30 Tex. Admin. Code § 55.209(e)(4).  
**APPLICANT MSEC ENTERPRISES, INC.’S RESPONSE TO HEARING REQUESTS** **PAGE 3**

## **B. Request of Martha Mayer**

On or about April 9, 2015, Martha Mayer (“Mayer”) submitted a public comment and request for contested case hearing on the TPDES Permit.<sup>2</sup> Mayer owns land that is approximately 1.9 miles downstream from the point of discharge. *See* Exhibit “A.” Mound Creek runs through her property. Mayer alleges that she uses Mound Creek for livestock watering, contact recreation, non-contact recreation, fishing, and park activities. She further alleges that the existing uses, flow characteristics, downstream characteristics, and normal dry weather characteristics of Mound Creek are misrepresented in the Application. Finally, Mayer contends that the proposed discharge will impair her existing uses of Mound Creek and be toxic to terrestrial life.

Mayer fails to establish she is an “affected person.” The proximity of her property at nearly two miles downstream from the proposed point of discharge along with her uses of Mound Creek fail to demonstrate any personal justiciable interest affected by the Application that is not common to the general public. *See* 30 Tex. Admin. Code § 55.203. As to her allegation concerning misrepresented information in the Application, Ms. Mayer provided no facts to support this. The ED addressed this allegation in its Response to Comment demonstrating the basis for its findings on these uses and characteristics and recommended issuance of the TPDES Permit. Mayer does not allege any disputed facts that are relevant or material to the Application. While Mayer generally addresses concerns about water quality, she fails to raise any legitimate dispute as to the TPDES Permit and how it impairs her interests in a unique manner. *See id.* § 55.209(e). Accordingly, Mayer’s request for hearing should be denied.

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<sup>2</sup> Mayer’s comments and request were raised during the public comment period. 30 Tex. Admin. Code § 55.209(e)(4).

### **C. Request of Jasper Duncan Cartwright and Joe Cartwright**

On or about April 16, 2015, landowners Jasper Duncan Cartwright and Joe Cartwright (collectively the “Cartwrights”) submitted their public comment and request for contested case hearing on the TPDES Permit Application.<sup>3</sup> The Cartwrights own property that is approximately 2.1 miles downstream from the point of discharge. *See* Exhibit “A.” Mound Creek flows through the Cartwrights’ property, and they state that they use the Creek to provide drinking water to livestock. The Cartwrights allege that the natural spring on the property will be polluted with sewage discharge and that other options for disposal exist due to other wastewater plants in the area. The Cartwrights allege no specific facts concerning their allegations of pollution.

The Cartwrights fail to establish they are “affected persons.” Due to their distant proximity to the point of discharge at over two miles downstream, the Cartwrights do not demonstrate any personal justiciable interest affected by the Application that is not common to the general public. *See* 30 Tex. Admin. Code § 55.203. Further, their allegations of pollution by sewage discharge were addressed by the ED in his Response to Comment, where it was demonstrated that the TPDES Permit will meet Texas Water Quality Standards and that the requirements of the TPDES Permit are protective of human health and the environment. Further, much of the effluent will be converted to Type I Reclaimed Water to be reused for irrigation on the District’s property. The ED addressed the Cartwrights’ comment concerning other options for disposal concluding that MSEC complied with the standards and requirements concerning regionalization, that no other existing system replied that it would provide service to the area, and that it was appropriate to move forward with the technical review of the Application. As such, the Cartwrights fail to raise any disputed

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<sup>3</sup> The Cartwrights’ comments and request were raised during the public comment period. 30 Tex. Admin. Code § 55.209(e)(4).

issues of fact or law that are relevant and material to the TPDES Permit Application. *See id.* § 55.209(e). Accordingly, the Cartwrights’ request for hearing should be denied.

**D. Necessity of TPDES Permit**

MSEC’s WWTP and TPDES Permit are necessary to enable the District to comply with an expansion project for schools in Montgomery County, Texas—a project approved by Montgomery County voters. Two letters submitted by the District’s Superintendent of Schools in support of the TPDES Permit demonstrate the necessity and urgency of the project and the proposed TPDES Permit. *See* true and correct copies of the District’s Letters attached hereto as Exhibits “B” and “C” respectively and incorporated by reference for all purposes. MSEC respectfully urges the Commissioners to deny all hearing requests and approve the TPDES Permit.

**III. CONCLUSION AND PRAYER**

The MSEC TPDES Permit complies with Texas Water Quality Standards and should be approved. None of the three request for meeting or hearing are sufficient to merit a contested case hearing on the Application. For the reasons stated herein, MSEC respectfully requests that the Commission decline to refer this matter to a contested case hearing.

Respectfully submitted,

/s/ James D. Bradbury  
James D. Bradbury  
Texas Bar No. 02814500  
Courtney Cox Smith  
Texas Bar No. 24045711  
James D. Bradbury, PLLC 9442  
Capital of Texas Hwy North,  
Arboretum Plaza 1, Suite 500  
Austin, Texas 78759  
512-343-3626  
512-345-2924 (fax)  
[jim@bradburycounsel.com](mailto:jim@bradburycounsel.com)

**ATTORNEYS FOR MSEC  
ENTERPRISES, INC.**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing document on the following by U.S. Mail or otherwise in accordance with 30 Tex. Admin. Code § 1.11 on this 11<sup>th</sup> day of January, 2016.

**FOR THE APPLICANT:**

Johnathan Blakley  
MSEC Enterprises, Inc.  
P.O. Box 1266  
Montgomery, Texas 77356-1266  
Tel: 979-220-5962  
Fax: 979-825-5100

Brian Christian, Director  
Texas Commission on Environmental Quality  
Environmental Assistance Division  
Public Education Program, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-4000  
Fax: 512-239-5678

J. Dale Browne  
McClure & Browne Engineering/Surveying,  
Inc.  
1008 Woodcreek Drive, Suite 103  
College Station, Texas 77845-8363  
Tel: 979-693-3838  
Fax: 979-693-2554

**FOR PUBLIC INTEREST COUNSEL:**

Vic McWherter, Attorney  
Texas Commission on Environmental Quality  
Public Interest Counsel, MC-108  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-6363  
Fax: 512-239-6377

**FOR THE EXECUTIVE DIRECTOR:**

Hollis Henley, Staff Attorney  
Texas Commission on Environmental Quality  
Environmental Law Division, MC-173  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-0600  
Fax: 512-239-0606

**FOR ALTERNATIVE DISPUTE  
RESOLUTION:**

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-4010  
Fax: 512-239-4015

Jose Alfonso Martinez, Technical Staff  
Texas Commission on Environmental Quality  
Water Quality Division, MC-148  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-4668  
Fax: 512-239-4430

FOR THE CHIEF CLERK:

Bridget C. Bohac  
Texas Commission on Environmental Quality  
Office of the Chief Clerk, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087  
Tel: 512-239-3300  
Fax: 512-239-3311

INTERESTED PERSONS:

Mark Fischer  
18838 Rabon Chapel Road  
Montgomery, Texas 77316-4126  
  
Beau Rees  
P.O. Box 1475  
Montgomery, Texas 77356-1475

REQUESTERS:

J. Duncan Cartwright & Joe Cartwright  
4884 Cartwright Road  
Montgomery, Texas 77316-4026

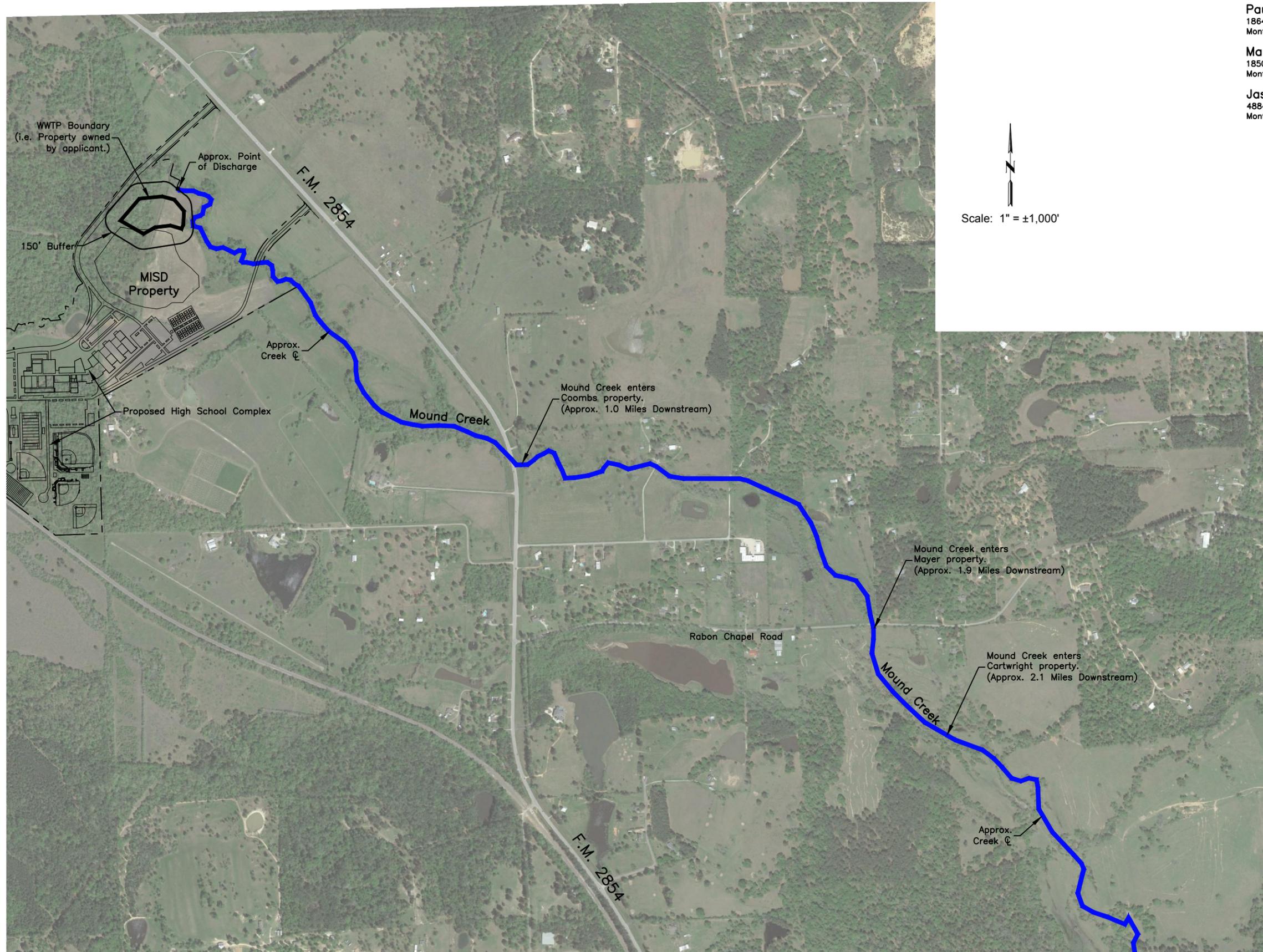
Paul D. Coombs  
130 April Breeze Street  
Montgomery, Texas 77356-5882

Martha Mayer  
18507 Rabon Chapel Road  
Montgomery, Texas 77316-4021

*/s/ James D. Bradbury*

James D. Bradbury

Exhibit A

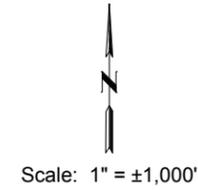


NOTE: Aerial imagery obtained from Google Earth 01/05/16.

Paul Coombs  
18648 Kinkaid Road E.  
Montgomery, Texas 77316

Martha Mayer  
18507 Rabon Chapel Road  
Montgomery, Texas 77316

Jasper Duncan Cartwright  
4884 Cartwright Road  
Montgomery, Texas 77316



McCLURE & BROWNE  
ENGINEERING/SURVEYING, INC.

1008 Woodcreek Drive, Suite 103  
College Station, Texas 77845  
(979) 693-3838  
Firm Reg. No. F-458



DATE: 01/05/16  
DRAWN BY: JDB  
DESIGNED BY: JDB

EXHIBIT "A"  
MOUND CREEK MAP

Proposed TPDES Permit WQ0015341001 (TX0136191)  
MSEC Enterprises, Inc., Montgomery, Texas

Exhibit B

Montgomery Independent School District

13159 Walden Road

P.O. Box 1475 Montgomery, TX 77356

Telephone: (936) 582-1333 Fax: (936) 582-6457

Beau Rees, Ed.D.  
Superintendent

Bobby Morris  
Assistant Superintendent

Sharon Fields  
Chief Financial Officer

MWD  
96930

REVIEWED

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B: BP

CHIEF CLERKS OFFICE

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TEXAS  
COMMISSION  
ON  
ENVIRONMENTAL  
QUALITY

April 28, 2015

Texas Commission on Environmental Quality  
Office of the Chief Clerk  
MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: Proposed Wastewater Discharge Permit Application WQ0015341001 (EPA I.D. NO. TX0136191)  
MSEC Enterprises, Inc.

Dear Sirs:

I am writing as Superintendent of the Montgomery Independent School District (MISD). The District has been working on plans for the expansion of its elementary, middle, and high school facilities. This planning is required to meet the phenomenal growth in the District's student population in southwestern Montgomery County.

Listed below is the projected population figures as well as the anticipated commencement dates for the proposed schools. The Permit Application referenced above is a component of waste water utility services that will be needed for all three of the sites.

<u>School Site</u>	<u>Count (Students &amp; Staff)</u>	<u>Schedule Opening</u>
Elementary	1000	August 2017
Middle School	1500	August 2017
High School	3000	August 2018

Prior to 2006, the District sought and secured the assistance of Mid-South Electric Cooperative Association and its water subsidiary MSEC Enterprises, Inc. When the MISD built its Lone Star Elementary School located off of FM 2854, MSEC was willing to help the District by constructing the wastewater treatment plant and provided operating services. Lone Star Elementary has been in operation now for over 8 years.

At this time, the District has requested the assistance of MSEC to construct and operate a wastewater treatment plant with capacity to serve the elementary, middle, and high school facilities. MSEC has filed the Application for a WW Discharge Permit for the benefit of the MISD to meet its growth and needs in this area.

MISD supports the issuance of the WW Discharge Permit and requests TCEQ to approve the same in a timely manner to meet the August 2017 Elementary and Middle School opening deadlines.

On behalf of the Montgomery Independent School District, its Board of Directors, faculty, students, and the families served by the District, I would like to express our appreciation for the Commission's consideration of this Application.

Sincerely,

Beau Rees  
Superintendent



MONTGOMERY INDEPENDENT SCHOOL DISTRICT  
P.O. BOX 1475 MONTGOMERY, TEXAS 77866

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P.O. Box 13087  
Austin, Texas 78711-3087

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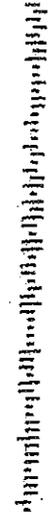


Exhibit C

Montgomery Independent School District

13159 Walden Road

P.O. Box 1475 Montgomery, TX 77356

Telephone: (936) 582-1333 Fax: (936) 582-6457

Beau Rees, Ed.D.  
Superintendent

Bobby Morris  
Assistant Superintendent

Sharon Fields  
Chief Financial Officer

November 20, 2015

Ms. Bridget C. Bohac  
Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

MWD  
96930

REVIEWED

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BY [Signature]

CHIEF CLERK'S OFFICE

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

RE: Wastewater Discharge Permit Application #WQ0015341001  
MSEC Enterprises, Inc. (the "Permit Application")

Dear Commissioners:

My name is Beau Rees, and I am Superintendent of Schools for the Montgomery Independent School District. I am writing in support of the issuance of the Permit Application referenced above.

The issuance of this permit is imperative for the District to continue its expansion project approved by the voters of Montgomery ISD in a May 2015 Bond Election (the "Project"). The Project includes the construction of an elementary and junior high school to be open in August 2017 and of a new high school to be open in 2018. These District projects have been approved to address the growing population demands in southwestern Montgomery County. The Project's combined schools will serve 5,500 students and faculty in an area of rural Montgomery County that currently does not have water or wastewater service available to it.

The District has worked with MSEC Enterprises in the past to secure water and wastewater service to serve the District's Lone Star Elementary School on FM 2854 near Rabon Chapel Road located approximately 3 miles east of the current Project. The District went to MSEC Enterprises for assistance with this Project because of the District's prior good experience with MSEC Enterprises, and MSEC Enterprises has been extremely helpful in planning for the provision of utilities for this Project.

By way of background, Montgomery Independent School District is a public school district organized under the Texas Education Code and located in Montgomery County, Texas (the "District"). MSEC Enterprises, Inc. ("MSEC") is a retail water and sewer utility company providing retail water and sewer service as defined by Section 13.002, WATER CODE, under the authority of and within the area described under Water Certificate of Convenience and Necessity ("Water CCN") No. 12887 in Grimes and Montgomery Counties, Texas, and Sewer Certificate of Convenience and Necessity ("Sewer CCN") No. 20984 in Montgomery County, Texas. The District requested MSEC to provide water and sewer service to the District expansion Project in 2011.

[Handwritten signature]

As part of the District expansion Project, the District acquired real property in Montgomery County lying north and west of FM 2854 and Keenan Cut-off Road, located approximately 3 miles west of MSEC's existing wastewater plant at Lone Star Elementary School. The District Property is described generally as:

TRACT 1: 127.462 acres of land, more or less, out of the Raleigh Rogers Survey, Abstract No. 33, Montgomery County, Texas, on which is to be constructed a high school, sports facilities, offices, other buildings and improvements; and,

TRACT 2: 63.45 acres of land, more or less, out of the Raleigh Rogers Survey, Abstract No. 33, Montgomery County, Texas, on which is to be constructed an elementary and junior high school, including offices, buildings, and other improvements.

The District requires a state-certified retail public water utility/public drinking water plant and distribution system with fire flow and a wastewater collection and treatment system to provide Utility Service to the Project.

Utility Service to Tract 1 requires the construction of a water plant, water distribution system, water reuse plant, wastewater plant, and wastewater collection system within, on, or near the District Property. Keenan Water Supply Corporation will provide water service to Tract 2.

MSEC will provide Wastewater Service to both Tracts 1 and 2 by Wastewater Service Facilities to be located on Tract 1 at the site described in the Permit Application. The Project includes a water reuse system to provide irrigation water for the sports facilities and to reduce the downstream flow of effluent.

The District plans to open the Elementary and Junior High Schools on Tract 2 by August 2017, which requires that wastewater service be available no later than April of 2017. Construction of the wastewater facilities must begin in March or April of 2016 in order to meet this schedule.

The District implores the Commission to approve the Application of MSEC Enterprises for a wastewater discharge permit pending under the referenced application to facilitate the growth in population and the educational needs of that growing population in the southwest part of Montgomery County, Texas, which the pending application will facilitate.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Beau Rees", written over a circular stamp or seal.

Beau Rees, Ed. D.  
Superintendent of Schools  
Montgomery ISD



MONTGOMERY INDEPENDENT SCHOOL DISTRICT

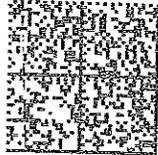
P.O. BOX 1475 MONTGOMERY, TEXAS 77386

MONTGOMERY

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Ms. Bridget C. Bohac  
Chief Clerk  
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Austin, Texas 78711-3087

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